

Stephen R. Hormel  
Hormel Law Office, L.L.C  
17722 East Sprague Avenue  
Spokane Valley, WA 99016  
Telephone: (509) 926-5177  
Facsimile: (509) 926-4318

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
(HONORABLE STANLEY A. BASTIAN)

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

MARIA GONZALEZ, )

Defendant. )

No. 1:18-CR-2039-SAB-1

RESPONSE TO PRESENTENCE  
INVESTIGATION REPORT

MARIA GONZALEZ, through counsel, Stephen R. Hormel for Hormel Law  
Office, L.L.C., submits the following Response to the Presentence Investigation  
Report (PSI):

**1. Acceptance of Responsibility Applies.**

The PSI concludes that acceptance of responsibility is not appropriate for  
this case because Ms. Gonzalez did not accept responsibility for her convictions in  
Cause No. 1:18-cr-2005-SAB for various drug trafficking offenses and firearms  
offenses. (ECF No. 154 at 15, ¶ 83). In support of that proposition, the PSI cites  
*United States v. Ginn*, 87 F.3d 367 (9th Cir. 1996). A later case, however, clarified  
the holding in *Ginn*. *United States v. Garrido*, 596 F.3d 613 (2010).

1           *Garrido* held that “where a defendant accepts responsibility for all counts  
2 that are grouped under U.S.S.G. §§ 3D1.1-3D1.5, that defendant is eligible for the  
3 § 3E1.1 reduction for those counts, even if the defendant has not accepted  
4 responsibility for other counts which, under 3D1.1(b) are excluded from grouping.”  
5 *Id.* at 619. What *Garrido* teaches *Ginn* only applies to those offenses the are  
6 “grouped” together into a single group.

7           In this case, Section 3D1.2(d) excludes from grouping “all offenses in  
8 Chapter Two, Part A (except § 2A3.5).” U.S.S.G. § 3D1.2(d). Thus, the drug  
9 offenses are grouped in a single group and Ms. Gonzalez is not entitled to a  
10 reduction for acceptance of responsibility for those offenses, even if she had  
11 entered a guilty plea to one of the drug offenses.

12           However, the conviction for attempted aggravated sexual abuse in this case  
13 is a separate group. It is not grouped with the drug offenses. Under the rationale in  
14 *Garrido*, the court may apply the acceptance of responsibility reduction for the  
15 aggravated sexual abuse offense since Ms. Gonzalez pleaded guilty to that offense.

16       **2. Leader/Organizer does not apply.**

17           The PSI enhances the offense level by 2 levels for organizer/leader. (ECF  
18 No. 154 at 17, ¶ 98). The Guidelines allow for a 2-level “organizer” enhancement  
19 “[i]f the defendant was an organizer, leader, manager, or supervisor in any criminal  
20 activity” involving fewer than five “participants,” provided that the criminal  
21 activity was not “extensive.” U.S.S.G. § 3B1.1(c). “A ‘participant’ is a person who  
22 is criminally responsible for the commission of the offense, but need not have been  
23 convicted. A person who is not criminally responsible for the commission of the  
24

offense ... is not a participant.” *Id.* cmt. n.1. In order to impose the enhancement, there must be a “showing that the defendant had control over other[ ]” participants or “organiz[ed] other[ ] [participants] for the purpose of carrying out” the charged crimes. *United States v. Whitney*, 673 F.3d 965, 975 (9th Cir. 2012) (internal quotation marks omitted). A defendant “organizes” other participants if the defendant has “the necessary influence and ability to coordinate the[ir] behavior ... so as to achieve the desired criminal result[s].” *United States v. Doe*, 778 F.3d 814, 826 (9th Cir. 2015); *see also United States v. Avila*, 95 F.3d 887, 890 (9th Cir. 1996) (stating that “some degree of control or organizational authority over others is required” in order for a § 3B1.1 enhancement to be proper (internal quotation marks omitted)).

Mere facilitation of criminal activity is not sufficient to support the enhancement. *Doe*, 778 F.3d at 825. Nor is it sufficient for a defendant to have organized property or activities-the defendant must have organized participants. *Id.* at 824 n.4.

“Co-equal” participants where evidence of a joint venture is undertaken, the “organizer” enhancement does not apply. *See* U.S.S.G. § 3B1.1 cmt. background (“Th[e] adjustment [of § 3B1.1] is included primarily because of concerns about relative responsibility. ... [I]t is also likely that persons who exercise a supervisory or managerial role in the commission of an offense tend to profit more from it ....”); *see also United States v. Egge*, 223 F.3d 1128, 1133 (9th Cir. 2000) (“Section 3B1.1 attempts to apportion relative responsibility where an offense involves multiple participants ....” (emphasis added)). *Compare Whitney*, 673 F.3d at 969,

1 975-76 (holding that an organizer enhancement was not warranted where the  
2 defendant merely "supplied [a co-conspirator] with tax forms and information on  
3 filing false returns"), *with Doe*, 778 F.3d at 826 (upholding an organizer  
4 enhancement where the defendant "put the [drug] deal[s] together by negotiating  
5 the type, quantity, and price of drugs for each transaction, and then ensured the  
6 drugs, money, and participants arrived when and where needed").

7 Ms. Gonzalez did not exercise control nor any "organizational authority"  
8 over the others. If Ms. Gonzalez "organized" the other by telling them how to go  
9 about committing the offense, then it would follow that nearly every co-conspirator  
10 in a limited conspiracy of equals would be an "organizer" of his or her comrades,  
11 and the enhancement of § 3B1.1(c) would be all but automatic for all conspirators  
12 in such cases. Such a result is inconsistent with the main purpose of the  
13 "organizer" enhancement, which is to "apportion relative responsibility where an  
14 offense involves multiple participants." *Egge*, 223 F.3d at 1133 (emphasis added).

15 Ms. Gonzalez was not the primary principal in committing the underlying  
16 offense. The evidence is that each of the co-defendants participated in their  
17 respective roles in the offense, voluntarily and are equally culpable for the events  
18 that occurred. The record does not support the conclusion that Ms. Gonzalez  
19 exercised sufficient control or organizational authority over the others to qualify  
20 for the 2-level enhancement of § 3B1.1(c). *United States v. Holden*, 908 F.3d 395,  
21 401-03 (9th Cir. 2018).

1     **3. Obstruction does not apply.**

2             The PSI enhances the offense level by 2 levels for obstructing justice. (ECF  
3             No. 154 at 17-18, ¶ 99). The PSI states:

4             The defendant willfully obstructed or impeded, or attempted to  
5             obstruct or impede, the administration of justice when the defendant  
6             approached the victim and told her not to report he rape to the jail  
7             officers and when she told Ms. Cloud and Ms. Hernandez-Proctor that  
8             if questioned by the jail officers, they should say there were trying to  
9             help the victim because she was hitting herself. See USSG §3C1.1,  
10            comment. (n. 4(A) and (G)).

11            (ECF No. 154 at 15, ¶ 81). The alleged conduct occurred prior to the investigation  
12            into the allegations.

13            Commentary to the Guidelines state: “[o]bstruction conduct that occurred  
14            prior to the start of an investigation of the instant offense of conviction may be  
15            covered by this guideline if the conduct was purposefully calculated, and likely, to  
16            thwart the investigation or prosecution of the offense of conviction.” U.S.S.G. §  
17            3C1.1, comment. n. 1. Any pre-investigation conduct as described does not  
18            establish the likelihood that the investigation into the matter was likely to be  
19            thwarted. Indeed, the investigation was not thwarted or delayed in any fashion in  
20            this case.

21            The Ninth Circuit has held, under 3C1.1 “that ‘willful’ means only that the  
22            defendant have engaged in intentional or deliberate acts designed to obstruct any  
23            potential investigation, *at the time an investigation was in fact pending*; it does not  
24            mean the defendant had to know for certain that the investigation was pending  
25            *United States v. Gilchrist*, 658 F.3d 1197, 1206 (9th Cir. 2011) (emphasis added).  
Since Ms. Gonzalez’s conduct, as described in paragraph 81, occurred prior to the

commencement of an investigation, then the 2 level enhancement does not apply.

*Id.*

4. **Guideline Range Calculation.**

The Guidelines should be calculated as follows:

A.	Drug Offense Level	32
B.	Attempted Aggravated Sexual Abuse: Base Offense Level	30
	+ § 2A3.1(b)(1)	4
	+ § 2A3.1(b)(3)	2
	- § 3E1.1	3
	Subtotal:	33
	+ § 3D1.4(a) 2 Units	2
	Total:	35

With a criminal history category III, the guideline range is 210 months to 262 months in prison.

It is requested that the Court impose no more than a combined sentence of 210. This includes 150 months on this case, 120 months on the drug offenses to run concurrent with this case, and a 5 year sentence on the firearm in furtherance of the drug trafficking to run consecutive to the drug offense convictions and the conviction in this case.

1 Dated this 25th day of September, 2019.

2 Respectfully Submitted,

3  
4 s/ Stephen R. Hormel

WSBA # 18733

Stephen R. Hormel

Hormel Law Office, L.L.C

17722 East Sprague Avenue

Spokane Valley, WA 99016

Telephone: (509) 926-5177

Facsimile: (509) 926-4318

9  
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on September 25, 2019, I electronically filed the  
12 foregoing with the Clerk of the Court using the CM/ECF System which will send  
13 notification of such filing to the following: Ian Garricks, Troy Clements and  
14 Thomas Hanlon, Assistant United States Attorneys.

15  
16 s/ Stephen R. Hormel

WSBA # 18733

Stephen R. Hormel

Hormel Law Office, L.L.C

17722 East Sprague Avenue

Spokane Valley, WA 99016

Telephone: (509) 926-5177

Facsimile: (509) 926-4318